

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,)	
)	
Appellee,)	
v.)	Appeal No. 14-4375
)	
WILLIAM WHITE,)	
)	
Appellant.)	

APPELLEE'S MOTION FOR EXTENSION OF TIME

Comes now the United States, by and through its counsel, Assistant United States Attorney Laura Day Rottenborn, and moves this Honorable Court for an extension of time of thirty days for the parties to file supplemental briefing in the above-captioned matter.

In support of its motion, the United States states as follows:

1. On September 12, 2014, Appellant-Defendant William White filed a direct appeal from his criminal convictions in the District Court for the Western District of Virginia on three counts of 18 U.S.C. § 875(b) and one count of the lesser-included offense of 18 U.S.C. § 875(c).
2. One issue on appeal was whether the District Court properly instructed the jury on the *mens rea* element of 18 U.S.C. § 875(b) and 18 U.S.C. § 875(c). Appellant-Defendant's opening brief requested that the Fourth Circuit stay

the appeal pending the outcome of *United States v. Elonis*, Case No. 13-983, 2015 U.S. Lexis 3719 (2015), which was awaiting oral argument in the United States Supreme Court at the time. The United States agreed that a stay was appropriate and the matter was held in abeyance pending the resolution of *Elonis*.

3. On June 1, 2015, the United States Supreme Court issued its opinion in *Elonis*, which addressed the *mens rea* element of 18 U.S.C. 875(c).
4. On July 17, 2015, the Court tentatively calendared this matter for oral argument the week of October 27, 2015.
5. On July 23, 2015, the United States respectively requested leave to file supplemental briefing regarding the effect of *Elonis* on the Defendant-Appellant's convictions under both 18 U.S.C. 875(b) and 18 U.S.C. 875(c), and counsel for the Appellant-Defendant concurred in the request.
6. On July 24, 2015, the Court granted the United States' motion and ordered that supplemental briefs be filed by August 13, 2015.
7. Undersigned counsel has conferred with the Appellate Chief for the Western District of Virginia, who has likewise conferred with attorneys in the Appellate Division of the Department of Justice. It is counsel's understanding that the DOJ Appellate Division intends to issue formal

guidance on how U.S. Attorney's Offices should apply the Supreme Court's *Elonis* decision and that such guidance should be forthcoming shortly.

8. As a result of the anticipated guidance from the Department of Justice on the precise issue for which supplemental briefing has been ordered, the United States respectfully requests additional time to prepare its brief.

WHEREFORE, the United States respectfully requests an extension of time of thirty days for both parties to file supplemental briefing in this matter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2015, I electronically filed the foregoing motion of Appellee with the Clerk of the Court using the CM/ECF System, which will send notice to Paul Beers, Counsel for the Appellant.

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